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Thomas Talbot and others

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Report No. 299.

[To accompany bill S. No. 45.]

HOUSE OF REPRESENTATIVES.

THOMAS TALBOT AND OTHERS.

FEBRUARY 29, 1848.

Mr. BUCKNER, from the Committee on Indian Affairs, made the following

REPORT:

The Committee on Indian Affairs, to whom was referred the bill from the Senate for the relief of Thomas Talbot and others, have had the same under consideration and submit the following report:

For the better understanding of these claims, we herewith give the report of the committee of the Senate of the present session, and on which the bill passed that body.

"The petitioners and other traders left Fort Osage, in the State of Missouri, in August, 1826, with merchandize for the northern provinces of Mexico, where they remained prosecuting their trade until the month of September, 1827. Having converted their merchandize into specie, horses, mules, and asses, they started on their way to the United States, following the route then lately surveyed by commissioners for that purpose, appointed by the government of the United States, from Missouri to Santa Fé, in New Mexico. Having prosecuted their journey to a point about twenty-five miles west of the Pawnee fork of the Arkansas river, they encamped; and having placed out their sentinels, and using all prudent and usual precautions to secure their stock, about midnight they were aroused by an attack upon the camp; guns were fired, the war-whoop raised, and a band of thirty Indians rushed in among, scattered and drove off about one hundred head of horses, mules, and asses. The next morning it was discovered that the attack had been made by a band of Pawnee Indians, and every exertion was made to recover the horses, mules,

and asses, but without success. In 1828, application for relief was made by the petitioners to Congress, and repeated in 1832 and 1833, but without success. In the year 1835, Thomas Talbot, one of the petitioners, addressed a letter to General Cass, then Secretary of War, inquiring of him if it would be inconsistent with existing relations between the United States and the Pawnee Indians for the company to make reprisals; to which letter the Secretary replied, in substance, that the proper remedy of the petitioners was under the intercourse law of 1802; that the claim should be presented to the offending Indians by their agent; that if they admitted the justice of the claim it should be paid out of their annuities; if they denied the claim, the agent would report the facts to the Indian department, and if the claim was made clear by proper evidence, payment would be made out of annuities due the Indians; and, that any attempt by the parties to redress themselves would forfeit all claims upon the government for indemnity, and would be inconsistent with our relations with the Indians.

In 1828, the year after the depredations were made, Major John Dougherty, agent for the Pawnees, presented this claim to the Pawnee Indians, and demanded of them a restoration of the stock above mentioned. The Indians admitted that their young men had taken the stock, and promised to restore it or make compensation for it, *as soon as they could steal as much from their enemies*. At this time there were no annuities due the Pawnees; but, by the treaty of 1833, between the United States and the Pawnee Indians, the Grand Pawnees and Republican villages became each entitled to \$1,300 annually, and the Pawnee Loups and Tappage Pawnee villages to \$1,000 each for twelve years.

In 1835, the same agent again demanded compensation for the robbery aforesaid. The Pawnees answered, that they thought that all claims against them had been cancelled by the treaty of 1833. It is proved that the stock taken by the Pawnees was valued by disinterested persons at the sum of \$4,155. By the treaty between the United States and the Pawnees, of 1825, the latter stipulate that they will not molest or interrupt any citizen or citizens who may be passing from the United States to New Mexico, or returning thence to the United States.

There can be no doubt but that the petitioners were lawfully in the Indian country, merely passing through from New Mexico to the United States by the usually travelled route; indeed, the route was surveyed by commissioners appointed by the United States government, and for the express purpose of encouraging and facilitating the then infant trade overland from the United States with northern Mexico. It is the duty of all governments to give protection to their citizens, and to redress wrongs done, either to person or property; and this duty is peculiarly obligatory where the wrong is inflicted by a foreign nation, people, or government.

There is a case (says Vattel) where the nation, in general, is guilty of the crimes of its members; that is, when, by its manners

and by the maxims of its government, it accustoms and authorizes its citizens, indiscriminately, to plunder and maltreat foreigners; to make inroads into the neighboring country, &c. Thus, the nation of Usbecks is guilty of all the robberies committed by the individuals of which it is composed. The Pawnee Indians are just such a people as above described, and certainly come within the rule laid down, if any people on the American continent would come within the rule. Your committee are of opinion, aside from the general rule above laid down, that the Pawnees, as a nation or independent people, would be responsible for the injury done the petitioners, under the treaty of 1825; for, by the 4th article, and last clause of the article, they stipulate "that they will not molest or interrupt any American citizen or citizens who may be passing from the United States to New Mexico, or returning thence to the United States." Two years thereafter, they violated that treaty by the robbery of the petitioners. The petitioners could not make reprisals, and thus redress their own wrongs, for this would have been a violation of the laws of the United States, and would have subjected them to punishment. Their only remedy was an appeal to their own government, which was made in 1827, and has been prosecuted up to this time without effect. A demand has been made, as before shown, upon the Pawnee nation, the justice of the claim acknowledged, but still no redress has been obtained. The committee are, therefore, of opinion that the petitioners are entitled to indemnity from the government, and therefore report the accompanying bill."

In addition to the foregoing, the committee of this House would submit, that it appears to have been the policy of our government in the year 1825, to introduce an overland trade with the northern provinces of Mexico. To effect this object, a road from Independence, in Missouri, to Santa Fé, in New Mexico, was determined on, and treaties were made with the Great and Little Osages and the Kansas nations for the right of way; which road, by said treaties, was to be forever free for the use of the citizens of the United States and the Mexican republic, who shall at all times pass and repass thereon without any hindrance or molestation on the part of said Indians. The Indians further undertake to render such assistance as may be in their power, on all proper occasions, to the citizens of the two republics, while passing through their country. They further agree that the privileges of the road shall extend so far as to allow hunting and camping grounds.

In the same year treaties were entered into with the Ottoes and Missourias and Pawnee nations, in which these tribes acknowledged themselves within the territories of the United States, and under the guardianship and protection of the same. As the road from Independence to Santa Fé would pass through a distant part of the territories of these nations, the commissioners of the United States procured in these treaties protection to our trade to New Mexico, as we find, in the 4th article of each treaty, the following words:

"And they further agree to give safe conduct to all persons who

may be legally authorized by the United States to pass through their country, and to protect in their persons and property all agents or their persons sent by the United States to reside temporarily among them, *nor will they, while on their distant excursions, molest or interrupt any American citizen or citizens, who may be passing from the United States to New Mexico, or returning thence to the United States.*"

In the 5th article of these treaties, the Indians become bound to restore to the citizens of the United States, any property which may be taken by any of their tribe to the proper owner; "and the United States guarantee to the said Indians a full indemnity for any property which may be stolen from them by citizens of the United States, provided the property cannot be found and returned to the said Indians."

These were the existing relations between the United States and the Pawnee Indians, when, in 1827, the Indians committed the depredations on Thomas Talbot and others, the present claimants before Congress. In 1833 another treaty was made with the Pawnee Indians, when a large and fertile territory was ceded to the United States. By this treaty the United States became bound to pay to the Indians \$4,600 per annum for 12 years, besides other considerable payments; and yet, although Thomas Talbot and others were urging their claims both before the agent of the Pawnees and Congress, and although the Pawnee Indians had acknowledged the claim and promised restitution, yet the government neglected to provide for this claim, and when the Indians were subsequently called on to pay it, they pleaded the treaty of 1833 in bar of the same, and our government went on and paid all the annuities to said Indians, and wholly neglected the claims of Thomas Talbot and others, and this too, when they knew of their existence and had acknowledged their justice.

By the treaty of 1825, it was stipulated that for injuries done to either by the other party, no attempt should be made by the injured party to make reprisals, but restitution should be made through the proper officers. Thus were our citizens encouraged to go into the trade with New Mexico—treaties were made to promote the same—roads were marked and made under authority of our government, yet, when our citizens were plundered, their hands were tied up, and when they asked restitution through the proper authority, their just claims were neglected and entirely overlooked in the treaty of 1833, when our government had it completely in its power to do them full and ample justice.

When we take into consideration the evident neglect on the part of our government in this matter—when we recollect that the treaty of 1833, which secured to our country a most valuable body of land for a mere trifle; which treaty was afterwards plead in bar by the Indians against this claim; and when we further consider, that if it be the duty of our government to protect our citizens against foreign nations, they are doubly bound to do so when we view the Indians within our territorial limits as our wards, subject to our

regulations and restraints, and ourselves bound to see justice done to, and exacted from them. From all these considerations, your committee is forced to the conclusion, that this government is bound in justice, equity and sound policy to pay this claim. We therefore return this bill to the House with a recommendation that it pass.